



**THE COMMONWEALTH OF MASSACHUSETTS**

***Appellate Tax Board***

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**Docket No. F337930**

**JOSE F. AND MICHELLE T. DaCOSTA**  
**Appellant.**

**v.**

**BOARD OF ASSESSORS OF THE**  
**CITY OF NEW BEDFORD**  
**Appellee.**

**DECISION WITH FINDINGS**

This appeal concerns the appellants' overvaluation claim for fiscal year 2019 ("fiscal year at issue") concerning residential property located in the City of New Bedford. On January 1, 2018, the relevant valuation and assessment date, the appellants were the assessed owners of an 8,617-square-foot parcel of real estate located at 194 Jarry Street and improved with a single family, ranch-style residence ("subject property"). The residence contains 2,214 square feet of finished living area, and is comprised of six rooms, including three bedrooms, as well as two full bathrooms, and an attached two-car garage. It was built in about 2013 and is located in a neighborhood with smaller homes dating mostly to the 1950s and late 1940s. For the fiscal year at issue, the subject property was assessed for \$474,400.

The appellants maintained that the assessed value of the subject property exceeded its fair cash value. To establish that the subject property could not be sold for as much as its assessed value, the appellants provided Multiple Listing Service information concerning sales of New Bedford residential properties sold from July 12, 2019 to January 12, 2020. They testified that, of the 308 properties on the list, only two had sold for prices in excess of the assessed value of the subject property. In addition, information provided by the appellants at the hearing indicated that the property at 173 Jarry Street, near the subject property, improved with a 1,286-square-foot ranch built around 1958, sold for \$243,000 in April of 2017.

In addition to information regarding sales, the appellants provided information regarding the assessment of various properties. With their abatement application, they submitted assessment information from the New Bedford website for nine residential properties in the City, including three new homes at 13, 21, and 59 Rosa Drive. But for one, a 5,353 square-foot colonial built around 1908, all were assessed for less than the subject property.

At the hearing the appellants presented assessment information for twenty-three residential properties, also obtained from the New Bedford assessors' website – nine in different parts of the City and the rest located on the subject property's street (Jarry Street) or on nearby Pine Grove Street. With the exception of one two-family style building, the Jarry and Pine Grove Street properties featured single-family homes, mostly built in the 1950s or the late 1940s, with finished living areas ranging from 3,223 square feet to 1,224 square feet. For the fiscal year at issue, these Jarry and Pine Grove Street properties were assessed for less than the subject property — at \$417,000 for a 1,996 square foot ranch and the rest ranging from \$389,000 (for the largest property, a cape-cod style home) to \$236,600 (for the ranch that sold in 2017).

The assessors introduced fiscal year 2019 property record cards for the nine properties for which the appellants had provided information with their abatement application (including the three Rosa Drive properties), and for two other properties — 45 Rosa Drive and the 1,224-square-foot home on Jarry Street. The fiscal year 2019 property record cards for 13 and 45 Rosa Drive, both improved with a ranch built around 2017, showed the following:

Property	FY 2019 Assessed Value	Finished Living Area (Sq. Ft.)	Assessed Value Per Sq. Ft.
13 Rosa Drive	\$400,100	1,384	\$289.09
45 Rosa Drive	\$430,300	1,695	\$253.86

The appellants' property was assessed at \$214.27 per square foot of finished living area.

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

A taxpayer has the burden of proving that the taxpayer's property has a lower value than that assessed. The burden of proof is upon the taxpayer to make out a right as a matter of law to an abatement of the tax. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The board is entitled to presume that the valuation made by the assessors is valid unless the taxpayer proves to the contrary. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984).

The appellants introduced no probative, credible evidence to establish that their property was assessed for more than its fair cash value.



Although the appellants asserted that their property could not be sold for as much as its assessed value, Multiple Listing Service information concerning sales of New Bedford residential properties from July 12, 2019 to January 12, 2020 was not, in the absence of appropriate adjustments, indicative of what properties comparable to the appellants' property sold for on, or approximate to, the January 1, 2018 valuation date — the period relevant to this appeal. In addition, the 2017 sale referenced in the information that the appellants introduced at the hearing was of a ranch unlike theirs — built around 1958 and much smaller in size.

Further, although the evidence introduced showed a range of assessed values for properties located on Jarry and neighboring Pine Grove Streets, as well as on other streets in New Bedford, the appellants did not undertake to relate those values to their property by comparing the size, condition, and age of these other properties with these features of their own home or making appropriate adjustments. Evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. G.L. c. 58A, § 12B. However, adjustments must be made to assessed values to account for differences between the subject property and the properties offered for comparison. ***Doherty v. Assessors of Lee***, Mass. ATB Findings of Fact and Reports 2013-174, 180-181.

Moreover, although the appellants pointed to newly constructed homes located on Rosa Drive, the property record cards introduced into evidence by the assessors for two of these properties did not support the appellants' assertion of overvaluation. Both properties were improved with recently constructed ranch-style homes, like the subject property, and both were assessed at a value per square foot of living area notably higher than that of the subject property. No evidence was introduced to establish that the appellants' larger property was overvalued at its significantly lower value per square foot of living area.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Presiding Commissioner decided this appeal for the appellee.

**APPELLATE TAX BOARD**

By: *Isi Patricia Ann Metzger*  
Patricia Ann Metzger, Commissioner

A true copy,

Attest: *Isi William J. Doherty*  
Clerk of the Board

Date: **May 12, 2020**

**NOTICE:** Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.